

ESTTA Tracking number: **ESTTA440347**

Filing date: **11/09/2011**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91201856
Party	Plaintiff Prodeen, Inc. Formerly DBA Proven Products
Correspondence Address	SHARYN PROVENZANO PRODEEN INC 2454 BRIARGLEN ROAD ACTON, CA 93510 UNITED STATES snapprotek7@aol.com
Submission	Answer to Counterclaim
Filer's Name	SHARYN PROVENZANO
Filer's e-mail	snapprotek7@aol.com
Signature	/SHARYN PROVENZANO/
Date	11/09/2011
Attachments	SCAN4424_000 (1).pdf ( 25 pages )(2802839 bytes )

JAMES G. MORRIS, State Bar #110955  
BRANDON C. MURPHY, State Bar #239528  
MORRIS & ASSOCIATES, Attorneys at Law  
2312 West Victory Boulevard  
Burbank, California 91506-1227  
Tel: (818) 524-2336; Fax: (818) 524-2337  
Email: morrisassoc@jgmorrislaw.com

Attorney for Defendants/Cross-Complainants  
SHARYN PROVENZANO, a.k.a.  
SHARYN NAPPI and PRODEEN, INC.

FILED  
2011 NOV -2 PM 12:55  
CLERK U.S. DISTRICT COURT  
CENTRAL DIST. OF CALIF.  
LOS ANGELES

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

CARD TECH INTERNATIONAL, LLLP, a  
Maine Limited Liability Limited  
Partnership,

Plaintiff,

v.

SHARYN PROVENZANO, a.k.a.  
SHARYN NAPPI, an individual; and  
PRODEEN, INC.,

Defendants.

SHARYN PROVENZANO, a.k.a.  
SHARON NAPPI, an individual; and  
PRODEEN, INC.,

Counter-Claimants,

v.

CARD TECH INTERNATIONAL, LLLP, a  
Maine Limited Liability Limited  
Partnership, and NORMAN FARRAR, an  
individual,

Counter-Defendants.

CASE NO. CV11-02434 DSF (PLAX)

**ANSWER AND COUNTERCLAIM  
OF SHARYN PROVENZANO, a.k.a.  
SHARYN NAPPI AND PRODEEN,  
INC. TO FIRST AMENDED  
COMPLAINT**

**DEMAND FOR JURY TRIAL**

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 Defendants, SHARYN PROVENZANO, a.k.a. SHARYN NAPPI and PRODEEN,  
3 INC., file this Answer and Counterclaim and respectfully allege as follows:

4 I

5 ANSWER

- 6 1. Paragraph 1 requires no response.
- 7 2. Paragraph 2 requires no response.
- 8 3. Paragraph 3 requires no response.
- 9 4. Paragraph 4 requires no response.
- 10 5. Defendants admit the facts alleged in paragraph 5.
- 11 6. Defendants admit the facts alleged in paragraph 6.
- 12 7. Defendants admit the facts alleged in paragraph 7.
- 13 8. Defendants deny the facts alleged in paragraph 8.
- 14 9. Defendants deny the facts alleged in paragraph 9.
- 15 10. Defendants deny the facts alleged in paragraph 10.
- 16 11. Defendants deny the facts alleged in paragraph 11.
- 17 12. Defendants deny the facts alleged in paragraph 12.
- 18 13. Defendants admit the facts alleged in paragraph 13.
- 19 14. Defendants admit the facts alleged in paragraph 14.
- 20 15. Defendants deny the facts alleged in paragraph 15.
- 21 16. Defendants admit the facts alleged in paragraph 16.
- 22 17. Defendants admit the facts alleged in paragraph 17.
- 23 18. Defendants admit the facts alleged in paragraph 18.
- 24 19. Defendants deny the facts alleged in paragraph 19.
- 25 20. Defendants deny the facts alleged in paragraph 20.
- 26 21. Defendants deny the facts alleged in paragraph 21.
- 27 22. Defendants deny the facts alleged in paragraph 22.
- 28 23. Defendants deny the facts alleged in paragraph 23.

1 24. Defendants deny the facts alleged in paragraph 24.

2 25. Defendants deny the facts alleged in paragraph 25.

3 26. Defendants deny the facts alleged in paragraph 26.

4 27. Defendants deny that the packaging purchased by Plaintiff was distinctive, but  
5 admit the remaining facts alleged in paragraph 27.

6 28. Defendants deny the facts alleged in paragraph 28.

7 29. Defendants deny the facts alleged in paragraph 29.

8 30. Defendants deny the facts alleged in paragraph 30.

9 31. Defendants deny the facts alleged in paragraph 31.

10 32. Defendants deny the facts alleged in paragraph 32.

11 33. Defendants deny the facts alleged in paragraph 33.

12 34. Defendants deny the facts alleged in paragraph 34.

13 35. Defendants deny the facts alleged in paragraph 35.

14 36. Defendants deny the facts alleged in paragraph 36.

15 37. Defendants deny the facts alleged in paragraph 37.

16 38. Defendants deny the facts alleged in paragraph 38.

17 39. Defendants deny the facts alleged in paragraph 39.

18 40. Defendants deny the facts alleged in paragraph 40.

19 41. Defendants deny the facts alleged in paragraph 41.

20 42. Defendants deny the facts alleged in paragraph 42.

21 43. Defendants deny the facts alleged in paragraph 43.

22 44. Defendants deny the facts alleged in paragraph 44.

23 45. Defendants admit the facts alleged in paragraph 45.

24 46. Defendants deny the facts alleged in paragraph 46.

25 47. Defendants deny the facts alleged in paragraph 47.

26 48. Defendants deny the facts alleged in paragraph 48.

27 49. Defendants deny the facts alleged in paragraph 49.

28 50. Defendants deny the facts alleged in paragraph 50.

- 1 51. Defendants deny the facts alleged in paragraph 51.
- 2 52. Defendants deny the facts alleged in paragraph 52.
- 3 53. Defendants deny the facts alleged in paragraph 53.
- 4 54. Defendants admit the facts alleged in paragraph 54.
- 5 55. All prior responses are re-alleged.
- 6 56. Defendants admit the facts alleged in paragraph 56.
- 7 57. Defendants deny the facts alleged in paragraph 57.
- 8 58. Defendants deny the facts alleged in paragraph 58.
- 9 59. Defendants deny the facts alleged in paragraph 59.
- 10 60. Defendants deny the facts alleged in paragraph 60.
- 11 61. Defendants admit the facts alleged in paragraph 61.
- 12 62. Defendants deny the facts alleged in paragraph 62.
- 13 63. Defendants deny the facts alleged in paragraph 63.
- 14 64. Defendants deny the facts alleged in paragraph 64.
- 15 65. Defendants deny the facts alleged in paragraph 65.
- 16 66. All prior responses are re-alleged.
- 17 67. Defendants deny the facts alleged in paragraph 67.
- 18 68. Defendants deny the facts alleged in paragraph 68.
- 19 69. Defendants deny the facts alleged in paragraph 69.
- 20 70. Defendants deny the facts alleged in paragraph 70.
- 21 71. Defendants deny the facts alleged in paragraph 71.
- 22 72. Defendants deny the facts alleged in paragraph 72.
- 23 73. Defendants deny the facts alleged in paragraph 73.
- 24 74. Defendants deny the facts alleged in paragraph 74.
- 25 75. All prior responses are re-alleged.
- 26 76. Defendants deny the facts alleged in paragraph 76.
- 27 77. Defendants deny the facts alleged in paragraph 77.
- 28 78. Defendants deny the facts alleged in paragraph 78.

- 1 79. Defendants deny the facts alleged in paragraph 79.
- 2 80. Defendants deny the facts alleged in paragraph 80.
- 3 81. All prior responses are re-alleged.
- 4 82. Defendants deny the facts alleged in paragraph 82.
- 5 83. Defendants deny the facts alleged in paragraph 83.
- 6 84. Defendants deny the facts alleged in paragraph 84.
- 7 85. All prior responses are re-alleged.
- 8 86. Defendants deny the facts alleged in paragraph 86.
- 9 87. Defendants deny the facts alleged in paragraph 87.
- 10 88. Defendants deny the facts alleged in paragraph 88.
- 11 89. Defendants deny the facts alleged in paragraph 89.
- 12 90. Defendants deny the facts alleged in paragraph 90.
- 13 91. Defendants deny the facts alleged in paragraph 91.
- 14 92. Defendants deny the facts alleged in paragraph 92.
- 15 93. Defendants deny the facts alleged in paragraph 93.
- 16 94. Defendants deny the facts alleged in paragraph 94.
- 17 95. Defendants deny the facts alleged in paragraph 95.
- 18 96. Defendants deny the facts alleged in paragraph 96.
- 19 97. Defendants deny the facts alleged in paragraph 97.
- 20 98. Defendants deny the facts alleged in paragraph 98.
- 21 99. Defendants deny the facts alleged in paragraph 99.
- 22 100. Defendants deny the facts alleged in paragraph 100.
- 23 101. All prior responses are re-alleged.
- 24 102. Defendants deny the facts alleged in paragraph 102.
- 25 103. Defendants deny the facts alleged in paragraph 103.
- 26 104. Defendants deny the facts alleged in paragraph 104.
- 27 105. Defendants deny the facts alleged in paragraph 105.
- 28 106. All prior responses are re-alleged.

1 107. Defendants deny the facts alleged in paragraph 107.  
2 108. Defendants deny the facts alleged in paragraph 108.  
3 109. Defendants deny the facts alleged in paragraph 109.  
4 110. Defendants deny the facts alleged in paragraph 110.  
5 111. Defendants deny the facts alleged in paragraph 111.  
6 112. Defendants deny the facts alleged in paragraph 112.  
7 113. Defendants deny the facts alleged in paragraph 113.  
8 114. All prior responses are re-alleged.  
9 115. Defendants deny the facts alleged in paragraph 115.  
10 116. Defendants deny the facts alleged in paragraph 116.  
11 117. Defendants deny the facts alleged in paragraph 117.  
12 118. Defendants deny the facts alleged in paragraph 118.  
13 119. Defendants deny the facts alleged in paragraph 119.  
14 120. Defendants deny the facts alleged in paragraph 120.  
15 121. Defendants deny the facts alleged in paragraph 121.  
16 122. Defendants deny the facts alleged in paragraph 122.  
17 123. All prior responses are re-alleged.  
18 124. Defendants deny the facts alleged in paragraph 124.  
19 125. Defendants deny the facts alleged in paragraph 125.  
20 126. Defendants deny the facts alleged in paragraph 126.  
21 127. Defendants deny the facts alleged in paragraph 127.  
22 128. Defendants deny the facts alleged in paragraph 128.  
23 129. Defendants deny the facts alleged in paragraph 129.  
24 130. Defendants deny the facts alleged in paragraph 130.  
25 131. Defendants deny the facts alleged in paragraph 131.  
26 132. All prior responses are re-alleged.  
27 133. Defendants deny the facts alleged in paragraph 133.  
28 134. Defendants deny the facts alleged in paragraph 134.

1 135. Defendants deny the facts alleged in paragraph 135.

2 136. Defendants deny the facts alleged in paragraph 136.

3 137. Defendants deny the facts alleged in paragraph 137.

4 138. All prior responses are re-alleged.

5 139. Defendants deny the facts alleged in paragraph 139.

6 140. Defendants have no information upon which to admit or deny the facts alleged  
7 in paragraph 140, and on that basis deny.

8 141. Defendants deny the facts alleged in paragraph 141.

9 142. Defendants deny the facts alleged in paragraph 142.

10 143. Defendants deny the facts alleged in paragraph 143.

11 144. All prior responses are re-alleged.

12 145. Defendants deny the facts alleged in paragraph 145.

13 146. Defendants deny the facts alleged in paragraph 146.

14 147. Defendants deny the facts alleged in paragraph 147.

15 148. Defendants deny the facts alleged in paragraph 148.

16 149. Defendants deny the facts alleged in paragraph 149.

17 150. Defendants deny the facts alleged in paragraph 150.

18 151. All prior responses are re-alleged.

19 152. Defendants deny the facts alleged in paragraph 152.

20 153. Defendants deny the facts alleged in paragraph 153.

21 154. Defendants deny the facts alleged in paragraph 154.

## 22 II

### 23 AFFIRMATIVE DEFENSES

24 155. Plaintiff has ratified and/or affirmed the actions it complains of.

25 156. Plaintiff's claims are barred by the doctrine of waiver.

26 157. Plaintiff's claims are barred by the doctrine of estoppel.

27 158. Plaintiff's claims are barred by the statute of limitations.

28 159. Plaintiff's claims are barred by laches.



1 160. Plaintiff's claims are barred by the doctrine of unclean hands.

2 161. Defendants are informed and believe that Plaintiff has failed to mitigate  
3 damages alleged in the Complaint, and thus any recovery should be reduced accordingly.

4 162. Defendants are informed and believe that Plaintiff is indebted to Defendants  
5 by virtue of Plaintiff's wrongful conduct, and that such indebtedness is a complete and/or  
6 partial setoff of the damages, if any, suffered by Plaintiff.

7 163. Plaintiff's claims are barred by a failure of consideration.

8 164. Plaintiff's claims are barred because Plaintiff has made numerous intentional  
9 and/or negligent misrepresentations to Defendants with the intent to induce Defendants to  
10 enter into the agreements referred to in Plaintiff's Complaint, and as a result of such  
11 misrepresentations, the agreements between the parties are void.

12 165. Plaintiff's claims are barred because Plaintiff lacks the standing to bring the  
13 present actions.

14 166. Plaintiff's claims are barred because Plaintiff has breached the obligations of  
15 Plaintiff under the agreements alleged, including, but not limited to, the implied covenant of  
16 good faith and fair dealing, and thereby has excused the performance of Defendants.

17 167. Plaintiff's claims are barred under the provisions of California Civil Code  
18 §3517.

19 168. Plaintiff's claims are barred by the provisions of California Civil Code §3521.

20 169. Plaintiff's claims are barred because Plaintiff, and/or the persons and/or  
21 entities acting on its behalf, consented to and acquiesced in the conduct alleged.

22 170. Plaintiff's claims are barred because Defendants have fully performed all  
23 contracts, statutory and other duties, if any, owed to Plaintiff, except those duties, the  
24 performance of which, has been excused by Plaintiff's conduct.

25 171. Plaintiff's claims are barred because Defendants have performed, satisfied and  
26 discharged all duties and obligations owed to Plaintiff arising out of any and all agreements,  
27 representations or contracts made by Defendants, or on their behalf, and this action is  
28 therefore barred by provisions of California Civil Code §1473.

1 172. Plaintiff's claims are barred because they fail to state claims upon which relief  
2 can be granted.

3 173. Plaintiff's claims are barred because Plaintiff has abandoned one or more of  
4 the trademarks and/or trade dress at issue.

5 174. Plaintiff's claims are barred because one or more of the trademarks and/or  
6 trade dress at issue are generic.

7 175. Plaintiff's claims are barred because one or more of the trademarks and/or  
8 trade dress at issue lack secondary meaning.

9 176. Plaintiff's claims are barred because there is no likelihood of confusion  
10 resulting from Defendants' alleged use of the trademarks and/or trade dress at issue.

11 177. Plaintiff's claims are barred because Defendants have engaged in fair use of  
12 the trademarks and/or trade dress at issue.

13 178. Plaintiff's claims are barred because one or more of the trademarks and/or  
14 trade dress at issue are invalid.

15 179. Plaintiff's claims are barred because Plaintiff's right to use the trademarks and  
16 trade dress at issue was obtained fraudulently.

17 180. Plaintiff's claims are barred because the use of the name, term or device  
18 charged to be an infringement is a use of a term or device which is descriptive of and used  
19 fairly and in good faith only to describe the goods of Defendants.

20 181. Plaintiff's claims are barred because one or more of the trademarks and/or  
21 trade dress at issue is functional.

### 22 III

### 23 COUNTERCLAIMS

24 Defendants SHARYN PROVENZANO aka SHARYN NAPPI (hereinafter "Nappi")  
25 and PRODEEN, INC. (hereinafter "Prodeen") complain of CARD TECH  
26 INTERNATIONAL, LLLP (hereinafter "Card Tech") and allege as follows:

27 ///

28 ///

**FIRST CAUSE OF ACTION**

**MONEY DUE ON PROMISSORY NOTE**

182. On or about March 1, 2010, Card Tech gave Prodeen a promissory note (hereinafter the "Note"), a true and correct copy of which is attached hereto and incorporated herein by this reference as Exhibit 1. Under the Note, it was agreed that Card Tech was indebted to Prodeen in the amount of \$47,520.00 and that Prodeen would make payments on the Note in twenty-four (24) equal monthly installments of \$1,980.00 each, beginning on March 1, 2010 and continuing on the first day of each successive month thereafter to and including February 1, 2012.

183. Card Tech stopped making payments on the Note in February 2011. Prodeen has not received payments on the Note for March 2011, April 2011 or May 2011.

184. Neither the whole nor any part of the above sum of the Note has been paid except the sum of \$23,760.00, and although demand has been made, there is now due and owing to Prodeen the sum of \$23,760.00. The Note also provides that if any payment under the Note is not made within fifteen (15) days of its due date, Prodeen may impose a late charge equal to five percent (5%) of the amount due, and Prodeen has applied such late charge to each of the unpaid payments. Also, Prodeen has the right to charge interest on the unpaid principal balance of the Note upon Card Tech's default at the interest rate of ten percent (10%) per annum. Prodeen hereby declares Card Tech in default of the Note and applies the ten percent (10%) rate of interest.

185. The Note provides that Card Tech shall pay all reasonable costs and expenses, including any reasonable attorney's fees that may be incurred by Prodeen in connection with the enforcement or collection of the Note. Prodeen has been required to retain the services of an attorney, and the amount of its fees will be shown according to proof at the time of trial.

///

///

///

**SECOND CAUSE OF ACTION**

**BREACH OF CONTRACT**

186. On or about March 1, 2010, Nappi and Card Tech entered into an Employment Agreement (hereinafter the "Employment Agreement"), a true and correct copy of which is attached hereto as Exhibit 2, whereby Nappi became Card Tech's Vice President of Sales, at an annual salary of \$55,000.00 plus commissions. The term of Nappi's employment was for five (5) years. The Employment Agreement provides that Nappi's employment could be terminated immediately for "just cause," which is defined to include "dishonesty...any act of fraud, including without limitation any misappropriation or embezzlement of assets...any material inaccuracy in any report of financial or other information to the company...any breach by the employee of any of her obligations under that certain asset purchase agreement."

187. Nappi has been terminated by Card Tech. Nappi is informed and believes and thereon alleges that in violation of the Employment Agreement, she has not been terminated for "just cause." Nappi has not committed any dishonesty, any act of fraud, any misappropriation or embezzlement of Card Tech assets, any material inaccuracy in any report of financial or other information to Card Tech, or a breach of any of her obligations under the Asset Purchase Agreement. Therefore, Nappi has been wrongfully terminated and is owed her annual salary for the remainder of her employment term with Card Tech at the rate of \$55,000.00 per year, plus commissions.

188. The Employment Agreement also provides that Nappi is to be reimbursed for all authorized business expenses. Card Tech has failed to reimburse Nappi for various business expenses in the sum of no less than \$30,000.00.

189. By failing to pay Nappi the salary and commissions due her under the balance of the term of the Employment Agreement and by failing to pay the reimbursement expenses to which she is entitled, Card Tech has breached the Employment Agreement.

190. Nappi has satisfied all obligations, terms and conditions required of her under the terms of the Employment Agreement.

1 191. As a direct and proximate result of Card Tech's breach of the Employment  
2 Agreement, Nappi has been damaged in a sum of no less than \$250,000.00, together with  
3 interest thereon at the legal rate from May 1 through the present.

4 **THIRD CAUSE OF ACTION**

5 **FAILURE TO PAY OVERTIME COMPENSATION**

6 192. Card Tech employed Nappi for more than eight (8) hours per day and more  
7 than forty (40) hours per work week and failed to pay Nappi overtime compensation for the  
8 overtime hours she worked, in violation of California Labor Code (the "Code") §§ 510,  
9 1194 and 1198 and the applicable Wage Order issued by the Industrial Welfare  
10 Commission of the State of California (the "Wage Order").

11 193. The Code and Wage Order provide that a workday consists of eight (8) hours,  
12 a work week consists of forty (40) hours, and an employer must compensate an employee  
13 who works overtime hours with either one and one half (1 ½) times or double the  
14 employee's regular rate of compensation. The Code and the Wage Order also provide that  
15 the employee's regular rate of compensation equals one-fortieth (1/40) of the employee's  
16 weekly salary.

17 194. Card Tech employed Nappi for more than eight (8) hours per day and more  
18 than forty (40) hours per work week, but Card Tech failed to pay Nappi the overtime  
19 compensation required by the Code and the Wage Order.

20 195. Card Tech deprived Nappi of her rightfully earned overtime compensation,  
21 and as a direct and proximate result of Card Tech's failure to pay said compensation, under  
22 Code §1194, Nappi is entitled to recover such amounts, plus interest thereon, attorney's  
23 fees, and costs.

24 **FOURTH CAUSE OF ACTION**

25 **FOR WAITING TIME PENALTIES**

26 196. Card Tech willfully failed to pay Nappi her earned wages in a timely manner  
27 upon separation, in violation of Code §§ 201, 202 and 203.

28 ///

1 197. Based on Card Tech's conduct as alleged herein, Card Tech is liable for  
2 statutory penalties pursuant to Code §203.

3 **FIFTH CAUSE OF ACTION**

4 **FOR INDEMNIFICATION OF EXPENDITURES**

5 198. Card Tech willfully failed to indemnify Nappi for all necessary expenditures  
6 and/or losses incurred by Nappi due to her as required by Code §2802.

7 199. Based on Card Tech's conduct as alleged herein, under Code §2802, Nappi is  
8 entitled to recover such amounts, plus interest thereon, attorney's fees and costs.

9 **SIXTH CAUSE OF ACTION**

10 **ALTER EGO**

11 200. Nappi is informed and believes and hereon alleges that at all times herein  
12 mentioned, Cross-Defendant NORMAN FARRAR (hereinafter "Farrar") is an individual  
13 residing at 78 Woodland Shore Drive, Poland Spring, Maine 04274.

14 201. Nappi is informed and believes and thereon alleges that Farrar is, and at all  
15 times herein mentioned was, the owner of Card Tech. Card Tech is, and at all times herein  
16 mentioned was, a mere shell and sham without capital or assets. Card Tech was conceived,  
17 intended, and used by Farrar as a device to avoid individual liability and for the purpose of  
18 substituting a financially insolvent partnership in the place of Farrar.

19 202. Card Tech is, and at all times herein mentioned was, so inadequately  
20 capitalized that, compared with the business to be done by Card Tech and the risk of loss  
21 attendant thereon, its capitalization was illusory and/or trifling.

22 203. Card Tech is, and at all times herein mentioned was, the alter ego of Farrar and  
23 there exists, and at all times herein mentioned has existed, a unity of interest and ownership  
24 between such Cross-Defendants, such that any separateness has ceased to exist, and that  
25 Farrar used assets of the partnership for his personal uses, commingled his and Card Tech's  
26 assets, caused assets of the partnership to be transferred to him without adequate  
27 consideration, and withdrew funds from the partnership bank accounts for his personal use.

28 ///

1       204. Card Tech is, and at all times herein mentioned was, a mere shell,  
2 instrumentality, and conduit through which Farrar carried on his business and the  
3 partnership name exactly how he had conducted it previous to formation, exercising  
4 complete control and dominance of such business to such an extent that any individuality or  
5 separateness of Card Tech and Farrar does not, and at all times herein mentioned did not  
6 exist.

7       205. Card Tech is, and at all times herein mentioned was, controlled, dominated and  
8 operated by Farrar as his individual business and alter ego, in that the activities and business  
9 of Card Tech were carried out without the holding of meetings, no records or minutes of  
10 any proceedings were maintained, and Farrar entered into personal transactions with Card  
11 Tech without the approval of other partners.

12       206. Adherence to the fiction of the separate existence of Card Tech as an entity  
13 distinct from Farrar would permit abuse of the partnership privilege and would sanction a  
14 fraud in that Farrar has shielded himself from personal liability from the claims of Nappi  
15 and Prodeen, and that if Nappi and Prodeen had known that Card Tech was Farrar's alter  
16 ego, they would not have entered into the various agreements with Card Tech nor would  
17 Nappi have provided any labor and/or services for Card Tech.

18       207. Adherence to the fiction of the separate existence of Card Tech as an entity  
19 distinct from Farrar would permit abuse of the partnership privilege and produce an  
20 inequitable result in that Farrar would be able to avoid personal liability on the claims of  
21 Nappi and Prodeen.

22       208. As a result of Farrar's conduct, Nappi and Prodeen have been proximately  
23 damaged in a sum to be shown according to proof at the time of trial, with interest thereon  
24 at the legal rate.

25       WHEREFORE, Nappi and Prodeen pray for judgment against Card Tech and Farrar,  
26 and each of them, as follows:

27 ///

28 ///

1                   **ON THE FIRST AND SIXTH CAUSES OF ACTION**

2           1.     For damages in a sum of no less than \$23,760.00, plus late charges and interest  
3 at the rate of ten percent (10%) per annum;

4                   **ON THE SECOND AND SIXTH CAUSES OF ACTION**

5           2.     For damages in a sum to be shown according to proof at trial, but no less than  
6 \$250,000.00, together with interest thereon at the legal rate;

7                   **ON THE THIRD AND SIXTH CAUSES OF ACTION**

8           3.     For overtime compensation in an amount to be shown according to proof at the  
9 time of trial;

10                  **ON THE FOURTH AND SIXTH CAUSES OF ACTION**

11          4.     For Labor Code §203 penalties in a sum to be shown according to proof at the  
12 time of trial;

13                  **ON THE FIFTH AND SIXTH CAUSES OF ACTION**

14          5.     For restitution of all amounts owed to Nappi by Card Tech under Labor Code  
15 §2802;

16                   **ON ALL CAUSES OF ACTION**

- 17          6.     Attorney's fees according to proof;  
18          7.     For costs of suit incurred herein; and  
19          8.     For such other and further relief as the court may deem just and proper.

20  
21                 DATED: November 1, 2011

22                                 MORRIS & ASSOCIATES

23  
24                                 By: Brandon C. Murphy  
25   BRANDON C. MURPHY  
26   Attorneys for SHARYN PROVENZANO,  
27   a.k.a. SHARYN NAPPI, an individual;  
28   and PRODEEN, INC.



**DEMAND FOR JURY TRIAL**

Defendant Sharyn Provenzano, a.k.a. Sharyn Nappi and Prodeen, Inc. hereby  
demand a jury trial on all cases of action asserted herein.

DATED: November 1, 2011

MORRIS & ASSOCIATES

By: Brandon C. Murphy  
BRANDON C. MURPHY  
Attorneys for SHARYN PROVENZANO,  
a.k.a. SHARYN NAPPI, an individual;  
and PRODEEN, INC.

provenzano-cardtech.answer.counterclaim.fac/11/1/11/t

**EXHIBIT 1**

PROMISSORY NOTE

\$47,520

March 1, 2010

FOR VALUE RECEIVED, Card Tech, LLLP, a Maine limited liability limited partnership ("Maker"), promises to pay to the order of Prodeen, Inc. (d/b/a Proven Products), a California corporation ("Holder"), at 2454 Briarglen Road, Acton, California 93510 or at such other location as Holder may designate from time to time, the principal amount of FORTY-SEVEN THOUSAND FIVE HUNDRED TWENTY (\$47,520) DOLLARS, without interest.

This Note shall be paid in twenty-four (24) equal monthly installments of one thousand nine hundred eighty (\$1,980) dollars each, beginning on March 1, 2010, and continuing on the first day of each successive month thereafter to and including February 1, 2012. This Note may be prepaid in whole or in part at anytime without penalty.

If any payment provided for herein is not made within fifteen (15) days of its due date, Holder may impose a late charge equal to five percent (5.0%) of the amount due.

Notwithstanding the payment provisions set forth above, the entire unpaid principal balance of this Note, together with all accrued and unpaid interest payable to Holder hereunder, shall become immediately due and payable in full at the option of Holder upon the occurrence of any of the following events (each an "Event of Default"):

- (i) Maker fails to pay Holder any payment of principal when the same becomes due and payable hereunder, and the continuation of such failure for a period of fifteen (15) days after Holder delivers written notice thereof to Maker;
- (ii) The sale of all or substantially all of assets of Maker, other than in the ordinary course of business;
- (iii) Maker's making of a general assignment for the benefit of his creditors or filing of a voluntary petition in bankruptcy; or
- (iv) Maker's adjudication as a bankrupt or insolvent.

Upon the occurrence of any Event of Default, Holder may exercise any one or more of the rights and remedies granted to it under this Note or applicable law, all such rights and remedies being cumulative and non-exclusive. No delay by Holder in the exercise of any right or remedy shall operate as a waiver thereof.

Upon the occurrence of any Event of Default, so long as such Event of Default has not been cured, Holder shall have the right to charge interest on the unpaid principal balance hereof at the rate of interest of ten percent (10%) per annum.

Maker shall pay all reasonable costs and expenses, including, without limitation, any reasonable attorneys fees and disbursements that may be incurred by the Holder in connection with the enforcement or collection of this Note.

This Note shall bind Maker, and its successors and assigns.

**THIS NOTE MAY NOT BE NEGOTIATED OR OTHERWISE TRANSFERRED  
OR ASSIGNED BY HOLDER WITHOUT THE WRITTEN CONSENT OF MAKER.**

This Note shall be governed by and construed in accordance with the laws of the State of Maine.

CARD TECH, LLLP

By: 

Stephen Farrar, President

**EXHIBIT 2**

## EMPLOYMENT AGREEMENT

THIS EMPLOYMENT AGREEMENT is entered into as of the 1<sup>st</sup> day of March 2010 by and between CARD TECH L.L.P., a Maine limited liability limited partnership with a mailing address at 33 Omni Circle, Auburn, Maine (the "Company"), and SHARYN PROVENZANO (a/k/a Sharyn Nappi) of Acton, California (the "Employee").

NOW, THEREFORE, and in consideration of the mutual promises and agreements herein contained and intending to be legally bound, the parties hereby agree as follows:

1. Employment. Subject to the terms and conditions set forth in this Agreement, the Company hereby agrees to employ the Employee, and the Employee hereby accepts such employment as the Company's Vice President of Sales (the "Employment").
2. Term of Employment.
  - a) The Employment will commence on the date hereof and, unless terminated earlier as provided for herein, shall continue for a term of (5) years following the date hereof. For the purposes of the Agreement, "Term of the Employment" shall mean the period beginning on the date hereof and ending on the date the Employment is terminated pursuant to the terms of the Agreement.
  - b) During the term of Employment if the Company is sold to a 3<sup>rd</sup> party, an Employment Agreement with a minimum duration of 2 years would be in effect for the Employee.
  - c) Upon expiration of the Terms of Employment, should the Employee continue in the Company's employ and the parties hereto do not execute a written renewal of new employment agreement, the Employee shall be an "employee at will" at the same level of compensation and with the same insurance and fringe benefits as set forth herein. No other terms of this Agreement shall be applicable subsequent to the expiration of the Term of the Employment.
3. Duties and Responsibilities. During the Term of Employment, the Employee shall perform such duties, and have such responsibilities, as shall be assigned by the Employee by the President of the Company from time to time. The Employee shall at all times devote her full-time and exclusive attention and energy to performing such duties during the Term of the Employment.
4. Compensation. During the Term of Employment, the Company agrees to provide the Employee with the following as full compensation for all services rendered hereunder:
  - a) Base Salary. A base salary at the annual rate of Fifty-Five Thousand and 00/100 Dollars (\$55,000.00) per year (the "Base Salary"). In addition a sales commission

of 3.5% on sales in excess of \$400,000.00 per year until such times as the Employee Generated Sales reach the level of \$700,000.00 at which time the Base Salary will be increased to Sixty - Five Thousand and 00/100 Dollars (\$65,000.00) per year in lieu of commissions.

b) Commissions. A sales commission of 3% will be paid on all Employee Generated Sales in excess of \$700,000.00 up to \$2,000,000.00 yearly. Sales commission of 5% will be paid on all Employee Generated Sales in excess of \$2,000,000.00 yearly.

c) Business Expenses. The Employee will be reimbursed for all authorized business expenses.

All compensation is subject to all statutory and mutually agreed upon withholdings and deductions.

5. Benefits. During the Term of Employment, the Employee shall be eligible to participate, on a fair and equitable basis, in any retirement, group insurance, or other employee plan or program made generally available to non-executive employees of the Company. Without limiting the foregoing, during the Term of Employment, the Company agrees to provide the Employee with the following benefits:

a) Health Insurance comparable to the Kaiser Permanente health insurance plan which covers the Employee as of the date of this Agreement; and

b) The Employee shall be entitled to two (2) weeks of paid vacation per calendar year. Three (3) weeks of paid vacation shall be granted to the Employee after five (5) years of Employment.

6. Termination of Employment.

a) Death. The Employment shall automatically terminate in the event that the Employee dies.

b) Company's Right To Terminate Upon Ceasing Operations. If the Company ceases operations for any cause it may terminate the Employee by providing thirty (30) day written notice.

c) Termination By Company For Just Cause. Notwithstanding anything contained herein to the contrary, the Company may terminate the Employment at anytime for Just Cause by providing written notice thereof to the Employee. For the purposes of this Agreement, "Just Cause" means the occurrence any of the following events:

(i) the Employee's (A) dishonesty, (B) conduct or conviction of a crime which could, in any way, adversely affect the Company, or (C) willful disobedience of the reasonable directives of the Company;

- (ii) any breach by the Employee of the policies, practices and procedures of the Company, provided such breach is not cured within seven (7) days after written notice thereof from the Company to the Employee;
- (iii) any act of fraud, including without limitation any misappropriation or embezzlement of assets, committed by the Employee against the Company or any Affiliate of the Company;
- (iv) any material inaccuracy in any report of financial or other information to the Company for which the Employee is responsible, directly or indirectly; or
- (v) any breach by the Employee of any of her obligations under that certain Asset Purchase Agreement of even date herewith among the Company, the Employee, and Prodeen, Inc.

7. Effect of Termination of Employment. Notwithstanding anything to the contrary set forth in this agreement:

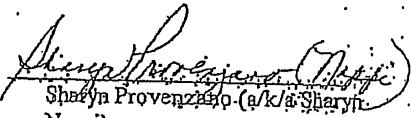
- a) If the Employment is terminated due to "Just Cause", the Company shall pay the Employee that portion of the Base Salary and the Commissions which is due the Employee through the date of such termination.

The parties have executed this Agreement in the day and year first written above.

CARD TECH, LLLP

By: 

Stephen Farrar, President

  
Sharyn Provenzano (a/k/a Sharyn Nappi)



**CERTIFICATE OF SERVICE**

I, TRACEY DAVENPORT, declare as follows:

I am employed in the County of Los Angeles, State of California. My business address is MORRIS & ASSOCIATES, 2312 West Victory Boulevard, Burbank, California 91506-1227. I am over the age of 18 and not a party to the above-captioned matter.

On November 1, 2011, I served on the interested parties listed on Attachment "A" a true and correct copy of the following:

**ANSWER AND COUNTERCLAIM OF SHARYN PROVENZANO, a.k.a. SHARYN NAPPI AND PRODEEN, INC. TO FIRST AMENDED COMPLAINT; DEMAND FOR JURY TRIAL**

☐ **NOTICE OF ELECTRONIC FILING:** The counsel listed on Attachment "A" have consented to electronic service and have been automatically served by the Notice of Electronic Filing, which is automatically generated by CM/ECF at the time said document was filed, and which constitutes service pursuant to FRCP 5(b)(2)(D).

☐ **E-MAIL:** By attaching a PDF of the document to an electronic mail sent to the email address(es) listed on Attachment "A", according to the parties' agreement.

☒ **FEDERAL:** I declare that I am employed in the office of a member of the California **State** Bar who is permitted to practice before this Court, at whose direction the service stated above was made, and declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed on November 1, 2011, at Burbank, California.

By: 

TRACEY DAVENPORT

**ATTACHMENT "A"**

Ernest E. Price, Esq.  
Arnold E. Sklar, Esq.  
Eugene S. Suh, Esq.  
ROPERS, MAJESKI, KOHN & BENTLEY PC  
515 South Flower Street, Suite 1100  
Los Angeles, CA 90071-2213  
Tel: (213) 312-2000  
Fax: (213) 312-2001  
Email: [eprice@rmkb.com](mailto:eprice@rmkb.com)  
Email: [asklar@rmkb.com](mailto:asklar@rmkb.com)  
Email: [esuh@rmkb.com](mailto:esuh@rmkb.com)

*Attorneys for Plaintiff*  
*Card Tech International, LLP*